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SERVICE INTERNATIONAL, INC. and
MENZIES AVIATION (USA) INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EUFROCINO PABLO CARRILLO, individually) Case No. 3:18-cv-02208
and on behalf of those similarly situated,))
Plaintiff,) DEFENDANTS AIRCRAFT SERVICE
vs.) INTERNATIONAL, INC. AND MENZIES
AIRCRAFT SERVICE INTERNATIONAL,) AVIATION (USA) INC.'S NOTICE OF
INC., a Delaware Corporation; MENZIES) REMOVAL (CAFA JURISDICTION)
AVIATION (USA) INC., Delaware)
Corporation; and DOES 1-10, inclusive,) State Court Action Filed: March 13, 2018
Defendant.) Filed concurrently with:
) (i) Defendants' Notice of Interested Parties,
) (ii) Declaration of Christopher Ward, and
) (iii) Defendants' Civil Case Cover Sheet
)
)
)

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION:**

PLEASE TAKE NOTICE that Defendants Aircraft Service International, Inc. (“ASIG”) and Menzies Aviation (USA) Inc. (“Menzies”) (collectively referred to herein as “Defendants”) hereby invoke this Court’s jurisdiction under the provisions of 28 U.S.C. §§ 1332, 1441, & 1446, as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 118 Stat. 4 (“CAFA”), and state the following grounds for removal to the United States District Court for the Northern District of California:

I. PROCEDURAL HISTORY

1. On or around March 13, 2018, Plaintiff Eufrocino Pablo Carrillo (“Plaintiff”) commenced this action by filing a Complaint in the Superior Court of the State of California, County of San Francisco, entitled “*Eufrocino Pablo Carrillo, individually and on behalf of himself and others similarly situated, vs. Aircraft Service International, Inc., et al*” Case No. CGC-18-564974. Plaintiff served ASIG with the Complaint on or around March 15, 2018. Declaration of Christopher Ward (“Ward Decl.”) at ¶ 4. A true and correct copy of Plaintiff’s Complaint, and any other pleadings filed with the San Francisco Superior Court, is attached to the Ward Decl. as Exhibit A.

2. Plaintiff has brought this action as “a class action on behalf of himself and other similarly situated employees in California” Ward Decl., Ex. A at ¶ 8. The putative class includes all current and former non-exempt California employees of Defendants who worked from March 13, 2014 through the present, excluding union members and those who were class members of previously resolved class action claims against Defendants. *Id.*

3. The Complaint asserts the following causes of action on behalf of the putative Class: (1) failure to pay overtime wages, (2) failure to pay vacation/PTO pay, (3) failure to pay minimum and agreed upon wages, (4) failure to timely pay final wages, (5) failure to provide meal and rest periods, (6) failure to provide proper itemized wage statements, (7) unfair competition, and (8) failure to provide personnel file and employment records. Ward Decl., Ex. A at Caption.

4. Plaintiff's claims are in part based on the allegations that Defendants failed to pay Plaintiff and the putative class overtime wages for working on the seventh day, Defendants failed to provide meal and rest periods or pay corresponding premiums, Defendants failed to pay out accrued but

1 unused vacation to employees at the time of their separation of employment, Defendants failed to
 2 include the correct legal name and address of the employers on the wage statements, and Defendants
 3 failed to provide Plaintiff with timely access to his personnel records. Ward Decl., Ex. A at ¶¶ 13-18.

4 5. Plaintiff seeks actual damages, penalties, and attorneys' fees and costs, as well as
 5 injunctive relief against Defendants. Ward Decl., Ex. A at Prayer for Relief.

6 6. This Notice of Removal is proper and timely pursuant to 28 U.S.C. § 1446(b)(1) because
 7 it is filed within 30 days after Plaintiff's March 15, 2018 service of the summons and the original
 8 Complaint on ASIG.

9 7. Notice of this removal will be properly given to Plaintiff and the Superior Court
 10 pursuant to 28 U.S.C. § 1446(d).

11 **II. REMOVAL IS PROPER UNDER CAFA**

12 8. The Action as filed in the Superior Court is one over which this Court has original
 13 jurisdiction pursuant to 28 U.S.C. § 1332(d), as amended by CAFA, because the matter in controversy
 14 as reasonably alleged in the Complaint exceeds the value of \$5,000,000, exclusive of interest and costs,
 15 and is a class action in which (i) at least one member of the class is a citizen of a state different than
 16 Defendants, and (ii) the proposed class includes at least 100 members. 28 U.S.C. § 1332(d)(2)(A) and
 17 (C); 18 U.S.C. § 1332(d)(5); Ward Decl. at ¶ 3; Ward Decl., Ex. A. at ¶¶ 4-6, 10.

18 **III. THE COMPLAINT ASSERTS A CLASS ACTION**

19 9. A removable class action includes "any civil action filed under Rule 23 of the Federal
 20 Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be
 21 brought under one or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B).
 22 Plaintiff alleges his claims as class claims pursuant to California Code of Civil Procedure section 382.
 23 Ward Decl., Ex. A at ¶ 8. California Code of Civil Procedure section 382 has requirements similar to
 24 those required under Federal Rule of Civil Procedure 23, including, among other things, requirements of
 25 numerosity of class members, commonality of the questions of law and fact, typicality of claims and
 26 defenses of the class, the common questions predominate, and adequacy of protection of the interests of
 27 the class by the class representatives. *Compare Fed. R. Civ. P. 23(a) with California Code of Civil*
 28 *Procedure section 382.* Plaintiff alleges that his claims meet the requirements to maintain a class action

1 under California Code of Civil Procedure 382. Ward Decl., Ex. A at ¶¶ 10-11. Therefore, the Action is
 2 a removable class action pursuant to 28 U.S.C. § 1332(d).

3 **IV. THE CITIZENSHIP OF THE PARTIES IS MINIMALLY DIVERSE**

4 10. Diversity among parties to a class action need only be minimally diverse, such that the
 5 citizenship of only one member of the putative class must be diverse from the citizenship of only one
 6 defendant. 28 U.S.C. § 1332(d)(2)(A).

7 11. Plaintiff brought this Action in the County of San Francisco, California, performed
 8 duties while employed for ASIG in the County of San Francisco, and represents that he resided in the
 9 state of California during his employment with Defendants. Ward Decl., Ex. A at ¶ 4; Ward Decl. ¶ 7.
 10 On that basis Defendants are informed and believe that Plaintiff is now, and was at the time the Action
 11 was commenced, a citizen of the State of California within the meaning of 28 U.S.C. § 1332(d)(2); *see*
 12 *Shelton v. Tiffin*, 47 U.S. 163, 185 (1848) (“[w]here an individual has resided in a State for a
 13 considerable time, being engaged in the prosecution of business, he may well be presumed to be a
 14 citizen of such State”).

15 12. Plaintiff admits that Defendants are Delaware corporations with their principal places of
 16 business and headquarters in Texas. Ward Decl., Ex. A at ¶¶ 5-6. Additionally, both Menzies’ and
 17 ASIG’s high level officers are headquartered at the DFW headquarters, and direct, control and
 18 coordinate the companies’ activities from DFW. Ward Decl. ¶ 3.

19 13. For purposes of diversity of citizenship, Defendants are therefore thus citizens of
 20 Delaware and Texas, or both states. 28 U.S.C. § 1332(c)(1) (for purposes of diversity of citizenship, a
 21 corporation is a citizen of every state or foreign country where it is incorporated and where it has its
 22 principal place of business); *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010) (holding principal place of
 23 business for purposes of citizenship “refers to the place where the corporation’s high level officers
 24 direct, control, and coordinate the corporation’s activities”); Ward Decl. ¶ 3.

25 14. Therefore, minimal diversity exists among the parties since the citizenship of Plaintiff is
 26 diverse from at least one of the Defendants.

27 **V. THE PROPOSED CLASS CONTAINS AT LEAST 100 MEMBERS**

28 15. The purported class, as alleged by Plaintiff in Paragraph 8 of his Complaint, includes

1 five sub classes:

2 a. The Overtime Class: All current and former non-exempt California employees of
 3 Defendants, excluding those who paid union dues and/or worked at SFO as Aircraft Service Fuelers,
 4 GSE Fuelers, and Lead Aircraft Service Fuelers, who worked for Defendants from March 13, 2014 to
 5 the present and worked over 8 hours in a day, 40 hours in a week, or on 7 days in one workweek;

6 b. The Vacation (PTO) Class: All current and former non-exempt California
 7 employees of Defendants, who worked for Defendants from March 13, 2014 to the present and did not
 8 use all of their vacation pay prior to the termination of their employment;

9 c. The Meal and Rest Period Class: All current and former non-exempt California
 10 employees of Defendants, who worked for Defendants from March 13, 2014 to the present, except those
 11 who were part of the settlement class in *Canlas et al. v. Aircraft Service International, Inc.* (Case No.
 12 4:16-cv-02355 JSW (N.D. Cal.));

13 d. The Waiting Time Class: All members of the Overtime Class and Vacation (PTO)
 14 Class whose employment ended at some point between March 13, 2015 through the present, except
 15 those who were part of the settlement class in *Jimenez et al. v. Menzies Aviation et al.* (Case No. 3:15-
 16 cv-012392 WHO (N.D. Cal.)); and

17 e. The Wage Statement Class: All current and former non-exempt California
 18 employees of Defendants, who worked for Defendants from March 13, 2017 to the present.

19 16. The Complaint alleges that each class is sufficiently numerous, and estimates that “there
 20 are hundreds or thousands of members in each Class.” Ward Decl., Ex. A at ¶ 10a. The proposed class
 21 thus meets the jurisdictional threshold of at least 100 members pursuant to 28 U.S.C. §1332(d)(5).

22 **VI. THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000**

23 17. To meet the amount in controversy requirement for removal of class actions under 28
 24 U.S.C. § 1332(d)(2), Defendants need only set forth a plausible allegation or set of allegations indicating
 25 that the amount in controversy exceeds \$5,000,000. *Dart Cherokee Basin Operating Co., LLC v.*
 26 *Owens*, 574 U.S. ___, 135 S. Ct. 547, 551, 554 (2014) (“as supplied by the removal statute itself [a]
 27 statement ‘short and plain’ need not contain evidentiary submissions”) (“a defendant’s notice of removal
 28 need include only a plausible allegation that the amount in controversy exceeds the jurisdictional

1 threshold"); *Letuligasenoa v. Int'l Paper Co.*, Case No.: 5:13-CV-05272-EJD, 2014 U.S. Dist. LEXIS
 2 69884, *9 (N.D. Cal. 2014) (when the complaint is silent as to the amount in controversy, the court must
 3 analyze the scope of the allegations in the complaint to determine if the amount in controversy threshold
 4 is satisfied).

5 18. Although Defendants dispute that they are liable to Plaintiff or the putative class for any
 6 of the damages alleged in the Complaint, Defendants allege that the amount in controversy exceeds
 7 \$5,000,000 based on Plaintiff's claims. Plaintiff alleges that he and the putative classes did not receive
 8 all overtime wages, did not receive all vacation pay, were not provided meal and rest breaks, did not
 9 receive all wages owed at the time of separation and are therefore entitled to waiting time penalties, and
 10 did not receive accurate wage statements. Ward Decl., Ex. A at ¶ 8. He therefore seeks compensatory,
 11 restitution and injunctive damages and penalties for himself and on behalf of the aggrieved employees'
 12 claims. Ward Decl., Ex. A at Prayer for Relief. Plaintiff has also engaged private legal counsel to
 13 represent him in this matter and seeks an award of attorney's fees and costs as permitted by the
 14 California Labor Code. *Id.*

15 19. As Plaintiff himself estimates that there are "hundreds or thousands of members in each
 16 Class" (Ward Decl., Ex. A at ¶ 10a), a conservative estimate of the number of members in each class is
 17 500. A review of Plaintiff's own records shows that he began his employment with ASIG with an
 18 hourly wage of \$14.00 per hour. Ward Decl., ¶ 7. Plaintiff alleges that "his claims are typical of the
 19 claims of the other class members," that he "suffered the same kinds of injuries suffered by other class
 20 members," and that he "seeks the same kind of relief sought by other class members." Ward Decl., Ex.
 21 A at ¶ 10c.

22 20. Unpaid Overtime Wages

23 a. Plaintiff alleges that Defendants failed to properly compensate the putative class
 24 for all overtime hours worked, by among other things, not paying 1.5 times their regular rate for hours
 25 worked over 8 in one day or 40 in one week and during the first 8 hours on the seventh consecutive day
 26 of work, and not paying 2 times their regular rate of pay for hours worked in excess of 12 per day and
 27 over 8 on the seventh consecutive day of work. Ward Decl., Ex. A at ¶¶ 13, 22-24.

28 b. Plaintiff does not specifically allege the number of overtime or double time hours

1 the putative class was not compensated for, nor any average number of unpaid overtime or double time
 2 hours per week or some other period. With that said, Plaintiff's vague allegations can reasonably be
 3 understood as alleging, at a minimum, that each individual putative class member was not compensated
 4 at his/her overtime rate (1.5 regular rate) for 2 hours per week. Ward Decl. ¶ 8.

5 c. Again applying a conservative estimate of 500 class members, based on
 6 Plaintiff's allegations that there are "hundreds or thousands" of individuals in each class, and Plaintiff's
 7 alleged class period of March 13, 2014 to the present (214 weeks), the number of unpaid overtime hours
 8 at issue for the putative class equals 214,000 (214 weeks x 500 putative class x 2 unpaid overtime
 9 hours/week). Ward Decl. ¶ 8.

10 d. As noted above in Paragraph 19, Plaintiff's starting hourly rate of pay was
 11 \$14.00, such that his overtime wage at time and a half was \$21.00, and he alleges his claims are typical
 12 of those of the class.

13 e. Based on the foregoing, the unpaid overtime amount in controversy across the
 14 alleged putative class is 214,000 (total number of unpaid overtime hours at issue) x \$21.00 (average
 15 hourly wage for the Putative class) = **\$4,494,000.00**. Ward Decl. ¶ 8.

16 21. Vacation

17 a. Plaintiff alleges that Defendants failed to pay the putative class members with
 18 their accrued but unused vacation at the time of their termination. Ward Decl., Ex. A at ¶ 15. Plaintiff
 19 does not specifically allege the number of hours he or any other putative class member should have been
 20 paid out. With that said, Plaintiff's vague allegations can be reasonably understood as alleging that each
 21 individual Putative class member was denied, at a minimum, an average of 1 hour of vacation pay.
 22 Ward Decl. ¶ 9.

23 b. Applying the conservative estimate of 500 class members, based on Plaintiff's
 24 own estimate that there are "hundreds or thousands" in the class, and Plaintiff's hourly rate of \$14.00,
 25 the minimum amount in controversy for Plaintiff's vacation claim is **\$7,000.00** (500 class members x
 26 \$14.00 for one hour of vacation). Ward Decl. ¶ 9.

27 22. Missed Meal and Rest Periods

28 a. Plaintiff alleges that Defendants failed to provide adequate meal break periods to

1 the putative class required under California law, and specifically that employees “were denied meal and
 2 rest periods, along with premium pay for missed meal and rest periods.” Ward Decl., Ex. A at ¶ 14.
 3 Plaintiff does not specifically allege the number of meal breaks the putative class was denied or missed,
 4 or any average number of meal breaks missed per week or some other period. With that said, Plaintiff’s
 5 vague allegations can be reasonably understood as alleging that each individual putative class member
 6 was denied, at a minimum, an average of 1 meal period per week and 1 rest period per week. Ward
 7 Decl. ¶ 10.

8 b. Applying the conservative estimate of 500 class members, based on Plaintiff’s
 9 own estimate that there are “hundreds or thousands” in the class, the number of missed meal periods by
 10 the putative class at issue equals 107,000 (214 weeks x 500 putative class members x 1 missed meal
 11 breaks/week) and the number of missed rest periods by the putative class at issue equals 107,000 (214
 12 weeks x 500 putative class members x 1 missed rest break/week). Ward Decl. ¶ 10.

13 c. Plaintiff alleges that pursuant to California Labor Code section 226.7, that
 14 “Defendants shall pay an employee an additional hour of pay at the employee’s regular rate of
 15 compensation for each day that the meal period is not provided, and another hour of pay at the
 16 employee’s regular rate of compensation for each day that a rest period is not provided.” Ward Decl.,
 17 Ex. A at ¶ 46.

18 d. As noted above in Paragraph 19, Plaintiff’s starting hourly rate of pay was
 19 \$14.00 and he alleges his claims are typical of those of the class.

20 e. Based on the foregoing, the missed meal period amount in controversy across the
 21 alleged putative class is \$1,498,000.00, calculated as 107,000 (total number missed meal periods at
 22 issue) x \$14.00 (average hourly wage), and the missed rest period amount in controversy is
 23 \$1,498,000.00, calculated as follows: 107,000 (total number missed meal periods at issue) x \$14.00
 24 (average hourly wage). Ward Decl., ¶ 10. Therefore, the amount in controversy for Plaintiff’s meal and
 25 rest period claim is, conservatively, **\$2,996,000.00** (\$1,498,000 + \$1,498,000). *Id.*

26 23. Waiting Time Penalties

27 a. Plaintiff also seeks waiting time penalties pursuant to Labor Code Section 203,
 28 which provides for a penalty of 30 days of the employee’s per diem wage rate. Ward Decl., Ex. A at ¶¶

1 8, 16, 36-38.

2 b. Applying the conservative estimate of 500 class members, based on Plaintiff's
 3 own estimate that there are "hundreds or thousands" in the class, and Plaintiff's hourly rate of pay of
 4 \$14.00, a conservative estimate of the average daily earnings for each terminated putative class member
 5 is approximately \$112.00 (\$14.00 x 8 hours). Ward Decl. ¶ 11.

6 c. The waiting time penalty claim thus alleges an amount in controversy of
 7 approximately **\$1,680,000.00**, calculated as follows: 500 (number of terminated Putative class
 8 members) x \$112.00 (average daily earnings) x 30 (30 day penalty). Ward Decl. ¶ 11.

9 24. Wage Statement Penalties

10 a. Plaintiff also seek penalties for inaccurate wage statements for the time period of
 11 March 13, 2014 through the present pursuant to Labor Code Section 226(a), which imposes a \$50.00
 12 initial violation for the first pay period and \$100.00 violation for every subsequent pay period, up to a
 13 maximum of \$4,000.00 per individual putative class member.

14 b. Defendants operate on a biweekly payroll period cycle, such that in the 57 weeks
 15 between March 14, 2017 through the present, there were approximately 24 pay periods at issue. Ward
 16 Decl. ¶ 12. Applying the conservative estimate of 500 class members, based on Plaintiff's own estimate
 17 that there are "hundreds or thousands" in the class, and based on the allegations in the Complaint, each
 18 putative class member would receive an alleged penalty of \$2,350, calculated as \$50 for the first
 19 violation and \$100 for each of the remaining 23 pay periods. The conservative penalty estimate with
 20 500 putative class members is **\$1,175,000.00** (500 x \$2,350). Ward Decl. ¶ 12.

21 25. Based on the amounts in controversy for each claim, as set forth above, the total
 22 damages sought amounts to **\$10,352,000.00** (\$4,494,000.00 + \$7,000.00 + \$2,996,000.00 +
 23 \$1,680,000.00 + \$1,175,000.00). Ward Decl. ¶ 13.

24 26. Attorneys' Fees

25 a. Plaintiffs also seek class-wide attorneys' fees, an amount properly included in
 26 the amount in controversy calculation for class action removal purposes under 28 U.S.C. §
 27 1332(d)(2). *Lowdermilk v. United States Bank Nat'l Ass'n*, 479 F.3d 994, 1000 (9th Cir. 2007)
 28 (overruled on other grounds) (showing attorneys' fees are properly considered for the amount in

1 controversy when attorneys' fees are authorized by the underlying statute); *see also Gibson v. Chrysler*
 2 *Corp.*, 261 F.3d 927, 942 (9th Cir. 2001) (showing attorneys' fees are considered on a class-wide basis
 3 as opposed to solely named plaintiffs). In the Ninth Circuit, a conservative estimate for attorneys' fees
 4 associated with prosecuting a class action case is approximately 12.5% of the total amount in
 5 controversy. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007). Thus, for purposes
 6 of calculating the amount in controversy for diversity jurisdiction, the above damages calculations
 7 should be increased by an additional 12.5% or \$1,294,000, to represent the estimated attorney's fees
 8 associated with prosecuting this Action (Ward Decl. ¶ 13).

9 27. Based on the foregoing, there is "a plausible allegation" that the amount in controversy
 10 set forth in the Complaint far exceeds the jurisdictional threshold for class actions and removal to this
 11 Court pursuant to diversity jurisdiction under 28 U.S.C. §1332(d) is proper. *See Lewis v. Verizon*
 12 *Commc'ns*, 627 F.3d 395, 401 (9th Cir. 2010), *citing Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir.
 13 2008) ("once the proponent of federal jurisdiction has explained plausibly how the stakes exceed the \$5
 14 million ... then the case belongs in federal court unless it is legally impossible for the plaintiff to recover
 15 that much"). Specifically, the total of the bolded amounts identified in Paragraphs 20-26 is
 16 **\$11,646,000.00**. Ward Decl. ¶ 13.

17 **VII. VENUE AND INTRADISTRICT ASSIGNMENT**

18 28. Venue of this Action is proper in this District pursuant to 28 U.S.C. § 1441(a) because
 19 the Superior Court is located within the jurisdictional boundaries of the Northern District of California.
 20 Moreover, the case is properly venued in the San Francisco Division of this District because a
 21 substantial portion of the alleged events or omissions that give rise to Plaintiff's claims occurred at SFO,
 22 which lies within San Francisco County. Ward Decl., Ex. A at ¶ 4; Ward Decl. ¶ 7.

23 **VIII. CONCLUSION**

24 29. As outlined above, this Court has original jurisdiction over the Action under CAFA and
 25 pursuant to 28 U.S.C. § 1332(d) such that the entire action may be therefore removed to this Court
 26 pursuant to the provisions of 28 U.S.C. § 1441.

27 30. Wherefore, Defendants pray that this action be removed from Superior Court for the
 28 State of California, County of Los Angeles to the United States District Court for the Central District of

1 California, and for such further relief as may be just and proper.

2 31. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing written notice of this removal
3 with the clerk of the Superior Court for the State of California, County of Los Angeles. Ward Decl., ¶ 5.
4 Copies of this Notice of Removal are also being served on Plaintiff's counsel pursuant to 28 U.S.C. §
5 1446(d). *Id.*

6 32. This Notice of Removal is filed subject to and with full reservation of rights, including
7 but not limited to, defenses and objections to venue, improper service of process, and personal
8 jurisdiction. No admission of fact, law or liability is intended by this Notice of Removal, and all
9 defenses, motions and pleas are expressly reserved.

10 DATED: April 13, 2018

FOLEY & LARDNER LLP
Christopher Ward
Archana A. Manwani

14 */s/ Christopher Ward*
15 Christopher Ward
16 Attorneys for Defendants AIRCRAFT SERVICE
17 INTERNATIONAL, INC. and MENZIES
18 AVIATION (USA) INC.